

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 04-10047-RCL
	)	
LUIS RODRIGUEZ	)	

**OPPOSITION OF THE UNITED STATES TO EXPEDITED MOTION FOR DEFENSE  
COUNSEL TO ATTEND MEDICAL EXAMINATION<sup>1</sup>**

The government opposes the motion of the defendant to have his counsel present at the court-ordered medical examination to be conducted on April 6. It is well-settled that such an examination is not a "critical stage" of the proceedings in the constitutional sense *requiring* the presence of counsel. E.g., U. S. ex rel. Stukes v. Shovlin, 464 F.2d 1211, 1213 (3<sup>rd</sup> Cir. 1972); United States v. Cohen, 530 F.2d 43, 48 (5<sup>th</sup> Cir. 1976). Nor it is clear what role defense counsel would play, given the purpose of the examination is to obtain a neutral third-party examination of the defendant's medical condition, an issue which the defendant himself has injected into this proceeding. As courts have recognized in analogous circumstances in civil litigation, "it is difficult to imagine a more disruptive result than to convert what is intended to be a medical examination into an adversary proceeding attended by counsel." McKitis v. Defazio, 187 F.R.D. 225, 228 (D. Md 1999). See also Warrick v. Brode, 46

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<sup>1</sup> The defendant has filed this motion on an expedited basis. It is not clear why it could not have been addressed during earlier proceedings.

F.R.D. 427, 428 (D. Del. 1969) ("The very presence of a lawyer for the examined party injects a partisan character into what should otherwise be a wholly objective inquiry."); Dziwanoski v. Ocean Carriers Corp., 26 F.R.D. 595 (D. Md. 1960) (same).

The examination of this defendant by the Court's expert should not be an exercise in advocacy. The doctor should be entitled to examine the defendant without being distracted by defense counsel or anyone else. Because the presence of counsel would serve no real purpose and could disrupt or complicate the examination, the government requests that the expedited motion be denied.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ John A. Wortmann, Jr.  
JOHN A. WORTMANN, JR.  
Assistant U.S. Attorney  
One Courthouse Way  
Boston, MA 02210  
(617) 748-3207

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